

CERTIFIED FOR PUBLICATION

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

CORRIE DONTA COLE,

Appellant and Appellant.

F050978

(Super. Ct. No. 06CM7253A)

**ORDER MODIFYING
OPINION AND DENYING
REHEARING**

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on June 19, 2007, and reported in the Official Reports (152 Cal.App.4th 230) be modified in the following particulars:

1. Towards the end of the first full paragraph on page 7, after the sentence ending “section 288 offense in responding to his *Romero* motion,” add as footnote 6 the following footnote:

⁶We reject appellant’s argument that, because the trial court found him to be within the spirit of the three strikes law given his history of continuing criminal conduct and “notwithstanding the nature of” his strike offense, the court necessarily based its decision exclusively on conduct other than that underlying the strike. Rather, the court expressed that, though the nature of the conduct underlying the strike might be a factor weighing in favor of leniency, other factors weighing against leniency prevailed.

2. On page 8, at the end of the first full paragraph ending in “(*Ibid.*),” add the following:

Before the state is required to make such a showing, however, the party making the equal protection claim must demonstrate that the law in question treats “similarly situated” individuals differently. (See *Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253.) The initial inquiry is “not whether persons are similarly situated for all purposes, but ‘whether they are similarly situated for purposes of the law challenged.’” (*Ibid.*, quoting *People v. Gibson* (1988) 204 Cal.App.3d 1425, 1438; see also *In re Eric J.* (1979) 25 Cal.3d 522, 530 & fn. 1.)

3. On page 8, the first sentence of the second full paragraph is deleted and the following inserted in its place:

Respondent contends both that the necessary close relation to a compelling state interest is present here and that, as a threshold matter, appellant has failed to demonstrate that for purposes of the three strikes law he is situated similarly to a defendant who has suffered a prior finding by a juvenile court that he violated section 288, subdivision (a).

Except for the modifications set forth, the opinion previously filed remains unchanged. There is no change in the judgment.

Appellant’s petition for rehearing is denied.

DAWSON, J.

I CONCUR:

CORNELL, J.